

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
8

9 Steven J. Bank,  
10 Plaintiff  
11 vs.  
12 Las Vegas Justice Court et al.,  
13 Defendants  
14

Case No.: 2:13-cv-00900-JAD-VCF

**Order Accepting Report and  
Recommendation in Part [Doc. 3] and  
Granting Motion to Dismiss  
without Prejudice [Doc. 4]**

15  
16 This case arises out of Plaintiff Steven Bank's conspiracy-related claims against state and  
17 private defendants. Doc. 1-1. Bank filed a Motion/Application for Leave to Proceed *in Forma*  
18 *Pauperis*, Doc. 1, on May 22, 2013. Magistrate Judge Cam Ferenbach entered an Order and Report  
19 and Recommendation on September 6, 2013, granting Bank's request for *in forma pauperis* status  
20 and recommending that Bank's claims be dismissed with prejudice. Doc. 3. On September 25,  
21 2013, Bank filed a Motion to Withdraw Complaint without Prejudice, Doc. 4, which the Court treats  
22 as a Motion to Dismiss without Prejudice, bearing in mind that federal courts "liberally construe the  
23 'inartful pleading' of pro se litigants" like Bank. *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir.  
24 1987) (quoting *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam)).

25 Federal Rule of Civil Procedure Rule 41 allows a plaintiff to "dismiss an action without a  
26 court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a  
27 motion for summary judgment." If this is the plaintiff's first dismissal "based on or including the  
28 same claim," then dismissal does not operate as an adjudication on the merits. *See* FED. R. CIV. P.

1 41(1)(B). Voluntary dismissal “means that the party is filing the dismissal without being compelled  
2 by another party or the court.” *Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev. Corp.*,  
3 933 F.2d 724, 727 (9th Cir. 1991) (quoting *Randall v. Merrill Lynch*, 820 F.2d 1317, 1321 (D.C. Cir.  
4 1987)). Such dismissal is an “absolute right” that “leaves no role for the court to play.” *Am. Soccer  
5 Co., v. Score First Enters.*, 187 F.3d 1108, 1109–10 (9th Cir. 1999).

6 The pleadings in this case have not yet closed and no defendant has filed an answer. Rule 41  
7 therefore allows voluntary dismissal. Accordingly, and with good cause appearing,

8 It is hereby ORDERED that the Report and Recommendation is **ACCEPTED and**  
9 **ADOPTED** to the extent it is consistent with this Order **[Doc. 3]**;

10 It is further ORDERED that Plaintiff’s Motion to Dismiss Complaint without Prejudice  
11 **[Doc. 4]** is **GRANTED**;

12 This action is **DISMISSED** without prejudice, and this case shall be **CLOSED**.

13 DATED November 6, 2013.

14  
15  
16 JENNIFER A. DORSEY  
17 UNITED STATES DISTRICT JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

